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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,226	08/05/2003	Paul A. Vaicunas	46170.0080	6512
7590	07/26/2004		EXAMINER	
L. Grant Foster HOLLAND & HART LLP P.O. Box 8749 Denver, CO 80201			MILLER, BENA B	
			ART UNIT	PAPER NUMBER
			3712	

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/634,226

Applicant(s)

VAICUNAS ET AL.

Examiner

Bena Miller

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 25-27 is/are rejected.
- 7) ☐ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is lack of antecedent basis for the limitation "the base" in claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-16, 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Musacchia (US Patent no. 5,988,469).

Regarding claims 1 and 12, Musacchia teaches in the figures a game call comprising a calling surface (78), a sounding board (col. 3, par.2), a housing (10), a flange (42 and 44) and a bottom wall (24).

Regarding claims 2 and 13, Musacchia further teaches a flange creates a sound chamber (col. 3, line 40-56).

Regarding claims 3 and 14, Musacchia further teaches a contoured surface flange (fig.3).

Regarding claims 4 and 15, Musacchia further teaches the flange terminates at an edge comprising contoured surface (fig.3).

Regarding claims 5 and 16, Musacchia further teaches an aperture (66).

Regarding claims 7 and 18, Musacchia further teaches a necked down portion adjacent the flange (14,18).

Regarding claim 8 and 19, Musacchia further teaches a pair of textured surface areas (14, 18).

Regarding claims 9-11 and 20-22, Musacchia further teaches a strap (38; the examiner takes the position that the strap is capable of coupling the housing to a firearm stock).

Regarding claim 23, Musacchia further teaches the method of using a game comprising the steps of providing a calling surface (78), providing a sounding board (78), providing housing (10), providing a flange (42,44) and positioning the game call (fig.3).

Claims 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Musacchia (US Patent No. 5,607,091).

Regarding claims 25-27, Musacchia teaches in the figures the method of connecting a game call comprising the steps of providing a game call (fig.3), inserting a strap (fig.2), providing a pair of respective fingers within the slot (58), supporting the straps on the fingers (fig. 6) and moving the straps around the fingers (fig.5 and 6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musacchia (US Patent no. 5,988,469).

Musacchia teaches in the figures most of the elements of the claimed invention except for a plurality of apertures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a plurality of apertures, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St Regis Paper Co. V. Bemis Co.*, 193 USPQ 8.

#### ***Allowable Subject Matter***

Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kaelin teaches a box cvall. Waltz teaches a game call holder. Adams teaches a dual sounder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

Art Unit: 3712

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bena Miller  
Examiner  
Art Unit 3712

Bbm  
July 23, 2004